Document 1 Filed 06/04/2008

S JS 44 (Rev. 12/07) (cand rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS				DEFENDANTS							
Le Thi Jackson, d.b.a. The New Market				The United States of America, Courtney L. Wilerson, in her Official Capacity, and Mike Johanns, in his Official Capacity							
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)				County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.							
(c) Attorney's (Firm Name, Address, and Telephone Number)				Attorneys (If Kno	own)						
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)				I. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff (For Diversity Cases Only) PTF DEF DEF DEF							
O.S. Government 3 Federal Question (U.S. Government Not a Party)				izen of This State 1 Incorporated or Principal Place 4 4							
2 U.S. Government 4 Diversity (Indicate Citizenship of Parties in Item III)				itizen of Another State 2 2 Incorporated and Principal Place of Business In Another State itizen or Subject of a 3 3 Foreign Nation				-	□ 5□ 6	□ 5□ 6	
W. MARTIN OR OF STATE	Foreign Country										
IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT TORTS FORFEITURE/PENALTY BANKRUPTCY OTHER STATU									UTFS		
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 151 Recovery of Overpayment 151 Medicare Act 152 Recovery of Overpayment 153 Recovery of Overpayment 154 Medicare Act 155 Recovery of Overpayment 155 Recovery of Overpayment 156 Recovery of Overpayment 157 Recovery of Overpayment 158 Recovery of Overpayment	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assaut, Libel & Slander 330 Federal Employers'	PERSONAL IN. 362 Personal Inju Med. Malpre Personal Inju Product Liab Machine Product Liab Injury Produ	nctice nry — pility sonal	610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs.		422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 PROPERTY RIGHTS 820 Copyrights 830 Patent		400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations			
152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment	Liability 340 Marine 345 Marine Product Liability	Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability PRISONER PETITIONS 510 Motions to Vacate		660 Occupational Safety/Health 690 Other LABOR	Safety/Health 90 Other			810 Selective Service			
of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury			710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation		861 H 862 E 863 E		Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Aericultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act			
REAL PROPERTY 210 Land Condemnation	CIVIL RIGHTS						SSID Title XVI RSI (405(g))				
240 Torts to Land 245 Tort Product Liability	442 Employment 443 Housing/ Accommodations 444 Welfare	Sentence Habeas Corpus: 530 General 535 Death Penalt	у	791 Empl. Ret. Inc Security Act		FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party		### 895 Freedom of Information Act ### 900 Appeal of Fee Determination Under Equal Access			
290 All Other Real Property	er Real Property 445 Amer. w/Disabilities - 540 Manda Employment 550 Civil R 446 Amer. w/Disabilities - 555 Prison Other 440 Other Civil Rights		F	462 Naturalization Application 463 Habeas Corpus - Alien Detainee 465 Other Immigration Actions		26 USC 7609		950 Constitutionality of State Statutes			
Proceeding State Court Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Transferred from											
VI. CAUSE OF ACTION	as authorized reta				'): 		_				
VII. REQUESTED IN COMPLAINT: □ CHECK IF THIS IS A CLASS ACTION DEMAND S CHECK YES only if demanded in complaint: UNDER F.R.C.P. 23 JURY DEMAND: □ Yes ☑ No VIII. RELATED CASE(S) PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE											
VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". IX. <u>DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)</u>											
TA. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY) SAN JOSE											
DATE 6/4/08 SIGNATURE OF ALTORNEY OF RECORD											

COMPLAINT FOR JUDICIAL REVIEW OF ADMINISTRATIVE DECISION - 1

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PARTIES

- 4. During all times relevant and material to this complaint plaintiff was, and still is, the owner of The New Market, doing business at 7475 Bancroft Avenue in Oakland, California and within the jurisdiction of this Court.
- 5. The United States is a defendant pursuant to the provisions of the Food Stamp Act, specifically 7 U.S.C. § 2023(a).
- 6. Defendant, Courtney L. Wilkerson (hereinafter "CHIEF"), is sued herein in her capacity as Chief of the Administration Review Division of the Department of Agriculture, Food and Nutrition Service (FNS), and the person ultimately responsible for the decisions of the Service.
- 7. Defendant, Ed Schafer (hereinafter "SECRETARY"), is sued herein in his capacity as the Secretary of the Department of Agriculture (hereinafter "USDA"), and is the person ultimately responsible for the decisions of the Department's constituent agencies.

FULFILLMENT OF ADMINISTRATIVE PREREQUISITES

- 8. All conditions precedent for the filing of this action have been complied with: plaintiff has exhausted her administrative remedies and will continue to be permanently disqualified if this action is not filed within thirty (30) days of the denial of plaintiff's final appeal by the defendants.
- 9. It has been fewer than thirty (30) days since the plaintiff's final appeal was denied by the defendants.

FACTS COMMON TO ALL CAUSES OF ACTION

- 10. On or about October 26, 2007 plaintiff received a letter from Teresa L. Toups (hereinafter "TOUPS"), Officer-In-Charge, Sacramento Field Office, Food and Nutrition Service, a division of the United States Department of Agriculture, which stated that the USDA was charging plaintiff with trafficking, as defined in section 271.2 of the Food Stamp Program Regulations.
- 11. On or about November 7, 2007 plaintiff responded to the defendant's October 26, 2007 letter and denied the trafficking as alleged.
- 12. On or about December 3, 2007 plaintiff received another letter from TOUPS, making a

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- finding that the violations had occurred, determining that plaintiff was not eligible for a monetary penalty, and disqualifying plaintiff from further participating in the FSP and advising plaintiff of her right to request review of this decision by the CHIEF.
- On or about December 6, 2007 plaintiff sent a letter to the CHIEF in Alexandria, Virginia, 13. 4 5 wherein she requested review.
 - 14. On or about December 17, 2007 plaintiff received a letter from Jerry Masefield (hereinafter MASEFIELD), Administrative Review Officer with the Administrative Review Branch, acknowledging plaintiff's timely request for review and informing plaintiff that the CHIEF has assigned the matter him.
 - 15. On or about May 5, 2008 plaintiff received another letter and from MASEFIELD upholding the findings of the Sacramento California Field Office and the sanction of Permanent Disqualification of plaintiff from participating as an authorized retailer in the FSP; the letter stated that plaintiff has up to thirty (30) days from the date of his letter to seek judicial review in the District Court where plaintiff resides or is engaged in business or in any court or record of the State having competent iurisdiction.
 - 16. Plaintiff has been transacting sales under the FSP for more than ten years, without ever receiving any warning from the Food and Nutrition Service (FNS). Plaintiff has maintained a clean record with defendants since she became their agent.
 - 17. Multiple inconsistencies and inaccuracies in the investigation report in this case necessitate a trial of this matter.
 - 18. The alleged transaction report from the investigating officer shows that the investigator made a single visit to plaintiff's store, during which he failed to observe the volume of specialty items and amount of stock alleged by plaintiff to be ordinarily on hand at The New Market. Had the investigating officer engaged in the appropriate and necessary diligence, she would have observed the large number of specialty items and large volume of stock which would have militated against the investigator's determination that plaintiff was engaged in trafficking.
 - 19. The alleged transaction reports showed even dollar amount purchases, multiple withdrawals, depletion of the majority or all of a recipient's account in short time frames, and high dollar amounts.

These transactions are reasonable given the number of high cost specialty items carried by plaintiff and level of customer loyalty and are not evidence of trafficking.

- 20. The transaction report provided by the investigating officer states that plaintiff's store has only a small amount of fresh fish and meats and only a small amount of ham hocks. This is error.
- Plaintiff has and at all relevant times herein mentioned carried a large and unique stock of such items as well as others which were erroneously not cognized by the investigation.
 - 21. Plaintiff was not given an opportunity to submit documentation or evidence in support of her claim that investigator's claims were error or in support of her claim of eligibility for a Civil Money Penalty in lieu of disqualification as required by law.
 - 22. Plaintiff was never provided any report regarding the investigator's visit to The New Market and thus was denied the opportunity to refute, augment, or explain the observations made by the investigator.
 - 23. Plaintiff's store is unique in the geographic area in that it carries numerous specialty and ethnic items demanded by the local community. This factor in itself suffices to satisfy the hardship requirement for the imposition of Civil Money Penalty in lieu of disqualification.
 - 24. Plaintiff will suffer irreparable damage and untold hardship if this disqualification is upheld in that a significant and irreplaceable amount of plaintiff's revenue from her store comes from Food Stamp sale transactions. Her main source of business is the sale of eligible foodstuffs which are primarily sold to Food Stamp customers. If defendant is allowed to proceed with the disqualification, plaintiff would have to close down her store as she would not be able to pay her overhead.

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FIRST CAUSE OF ACTION

- 25. Plaintiff repeats and re-alleges paragraphs 1 through 24 as if fully stated herein.
- 26. The defendant's decision to permanently disqualify plaintiff from the FSP was arbitrary and capricious, and violated defendant's own regulations.

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SECOND CAUSE OF ACTION

- 2 27. Plaintiff repeats and re-alleges paragraphs 1 through 24 as if fully stated herein.
 - 28. The defendant's decision to find plaintiff to be ineligible for a Civil Money Penalty in lieu of disqualification violated 7 C.F.R. § 278.6.

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THIRD CAUSE OF ACTION

- 29. Plaintiff repeats and re-alleges paragraphs 1 through 24 as if fully stated herein.
- 30. The permanent disqualification of plaintiff by defendants from participating in the FSP is a denial of plaintiff's rights of due process of law, in that there is no rational basis in the law for that action.

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FOURTH CAUSE OF ACTION

- 31. Plaintiff repeats and re-alleges paragraphs 1 through 24 as if fully stated herein.
- 32. The permanent disqualification of plaintiff by defendants from participating in the FSP is a denial of plaintiff's rights of due process of law, in that it proceeded with insufficient notice and opportunity to be heard before a neutral magistrate.

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FIFTH CAUSE OF ACTION

- 33. Plaintiff repeats and re-alleges paragraphs 1 through 24 as if fully stated herein.
- 34. The permanent disqualification of plaintiff by defendants from participating in the FSP is a denial of plaintiff's rights of due process of law, in that the defendant failed to make reasonable and rational findings under the appropriate legal standard.

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WHEREFORE, plaintiff prays for a judgment and order of this court:

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- (1) Ordering defendant to stay execution of its decision to permanently disqualify plaintiff from the FSP and enjoining the implementation of the threatened disqualification;
- (2) Ordering defendant to reinstate plaintiff in the FSP immediately;

- (3) Ordering the defendant to impose Civil Money Penalty in lieu of disqualification if the court deems any such penalty is just and proper;
- (4) For costs of suit herein;

(5) Any such further relief as the Court may deem just and proper.

Dated: 2 3,08

Paul L. Alaga

Attorney for Plaintiff